

MICHAEL C. SNYDER  
MARK D. STREED  
DANIEL C. GUERRERO  
JEFFERY P. OISTAD  
ANTHONY J. NEMO  
KONSTANDINOS NICKLOW  
PAMELA J. SPAULDING  
ANDREW L. DAVICK  
GENEVIEVE M. ZIMMERMAN

LAW OFFICES  
**MESHBESHER & SPENCE, LTD.**

1616 PARK AVENUE  
MINNEAPOLIS, MINNESOTA 55404

**(612) 339-9121**

FAX (612) 339-9188

www.meshbeshers.com

**REPLY TO MINNEAPOLIS OFFICE**

ZACHARY C. BAUER  
JAMES B. SHEEHY  
LINDSEY A. CARPENTER  
RACHEL N. SIMPSON  
ASHLEIGH E. RASO

OF COUNSEL

RONALD I. MESHBESHER  
KENNETH MESHBESHER

February 7, 2018

*Via ECF and Email*

The Honorable Joan N. Ericksen  
District Judge, District of Minnesota  
United States District Court  
12W U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Magistrate Judge Franklin L. Noel  
United States District Court  
9W U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Re: Bair Hugger Forced Air Warming Products Liability Litigation  
MDL Case No. 15-2666 (JNE/FLN)

Dear Judge Ericksen and Judge Noel,

We write in response to Defendants' letter to the Court submitted via email earlier this week. The letter was not filed via CM/ECF, but seeks a modification to the Court's PTO 24 regarding bellwether repopulation requirements and deadlines. Plaintiffs object to both the substance and procedural approach of Defendants' request for modification of PTO 24.

Plaintiffs leadership have reached out to all counsel of record on the 100 cases randomly selected by the Court as candidates for the bellwether repopulation process, and we are endeavoring to collect and then produce the proof of product information by Feb. 9, 2018 as ordered by the Court. Defendants demanded Plaintiffs also provide Lexecon waivers on a rolling basis as we receive them, but all by Feb. 9th as well. Respectfully, the Lexecon waiver is not part of PTO 24, and candidly Plaintiffs simply cannot meet Defendants new demand that such information be provided by Friday. Each of the individual attorneys whose cases were randomly selected received a copy of

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the Order, and have been working to assemble the requisite information. Proof of product involves producing records presumably counsel already has in their possession, or preparing a declaration based on information known to counsel.

Obtaining a Lexecon waiver, on the other hand, requires a detailed review of the law and a comprehensive meeting or call with the client to discuss the legal implications of a potential waiver, alternatives, etc. Plaintiffs leadership represented to Defense counsel we will use be efforts to provide information on the waivers by the end of the month, but object both to the attempt to mandate information be provided piecemeal on a rolling basis, and the attempt by 3M to impose an unachievable deadline for a submission that doesn't exist in the PTO. Plaintiffs respectfully request that to the extent Defendants are seeking a modification to a PTO entered by this Court, that a formal motion be brought pursuant to the rules and be filed as part of the official record in this MDL.

Finally, we write with an update on a deposition issue. Plaintiffs' counsel are in Washington, DC to conduct the depositions of two of Defendants' proffered expert witnesses in advance of the Court's deadline. We were advised this morning that Ms. Hughes is ill and unavailable for her deposition today. Plaintiffs note the financial and substantive burden this imposes on Plaintiffs, and have requested Defendants arrange to fly Ms. Hughes to Minneapolis so we can conduct her deposition next Wednesday morning, February 14th.

Respectfully submitted,

/s/ Genevieve M. Zimmerman

Genevieve M. Zimmerman, for plaintiffs

GMZ/hms

cc: Jerry Blackwell, Esq. (via ECF & email)  
Mary Young, Esq. (via ECF & email)  
Ben Hulse, Esq. (via ECF & email)  
Bridgett Ahmann, Esq. (via ECF & email)  
Ben Gordon, Esq. (via ECF & email)  
Jan Conlin, Esq. (via ECF & email)  
Gabriel Aassad, Esq. (via ECF & email)